

10-19-07

Silicon Valley,
Jacks

1 JOSEPH COSTELLA & ASSOCIATES
2 JOSEPH COSTELLA, Esq.
3 California State Bar Number 114368
4 215 Lennon Lane, Suite 200, Walnut Creek, CA 94598
Post Office Box 8090, Walnut Creek, CA 94596
(925) 945-4491

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6 Attorneys for Defendant,
HUMANE SOCIETY SILICON VALLEY
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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12 **UNLIMITED JURISDICTION**

14 LEE JACKSON and KENNETH Case No: 1-07-CV-079050
15 JACKSON,
16 Plaintiff, ANSWER TO FIRST AMENDED
COMPLAINT

17 v.

18 SILICON VALLEY ANIMAL CONTROL
19 AUTHORITY; CITY OF SANTA
20 CLARA; CITY OF CAMPBELL;
21 HUMANE SOCIETY SILICON VALLEY
and DOES 1 TO 20,

22 Defendant.

/

24 COMES NOW Defendant HUMANE SOCIETY SILICON VALLEY
25 (hereinafter "this answering defendant") answering the allegations of the First
26 Amended Complaint, this answering defendant denies generally and specifically, each
27 and every, all and singular, the allegations contained in said First Amended Complaint.
28

1 Further answering said First Amended Complaint, this answering defendant denies
2 that plaintiff was damaged in any sum, or at all.
3

4 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
5 AMENDED COMPLAINT:

6 That at all times and places set forth in the First Amended Complaint, each
7 plaintiff was guilty of carelessness, recklessness and negligence in and about the
8 matters and happenings set forth therein and to the extent that such conduct
9 contributed to the alleged damages, if any there were, each plaintiff's right to recover is
10 proportionately diminished.

11 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
12 FIRST AMENDED COMPLAINT:

13 That at all times and places set forth in the First Amended Complaint, other
14 persons, including, but not limited to, parties of this suit, were negligent, careless and
15 otherwise legally blameworthy in the manner in which they conducted themselves.
16 Said negligence, carelessness and legal fault proximately caused, and proximately
17 contributed to causing, the injuries and damages alleged in the First Amended
18 Complaint, if any in fact there were, this answering defendant is, therefore, entitled to
19 implied equitable indemnity and contribution from said other persons to the extent of
20 their percentage of fault or culpability.

21 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
22 AMENDED COMPLAINT:

23 That each plaintiff was at such time and place alleged in the First Amended
24 Complaint in violation of a statute, and that this violation proximately caused such
25 injuries as alleged by each plaintiff, if any there were.
26

27 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
28 FIRST AMENDED COMPLAINT:

1 That the First Amended Complaint fails to state facts sufficient to constitute a
2 cause of action against this answering limitations.
3

4 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
5 AMENDED COMPLAINT:

6 Defendant alleges that the First Amended Complaint, and each cause of action
7 contained therein, is barred by reason of a statute of limitations, including but not
8 limited to Code of Civil Procedure Section 335.1.

9 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
10 AMENDED COMPLAINT:

11 That as to any intentional tort being claimed by any plaintiff, the actions of this
12 answering defendant was done with each plaintiff's consent.

13 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
14 FIRST AMENDED COMPLAINT:

15 That as to any intentional tort being claimed by any plaintiff, the actions of this
16 answering defendant are subject to privilege.

17 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
18 FIRST AMENDED COMPLAINT:

19 That this answering defendant presently has insufficient knowledge or
20 information on which to form a belief as to whether it may have additional, as yet
21 unstated, defenses available. This answering defendant herein reserves the right to
22 assert additional defenses in the event discovery indicates that they would be
23 appropriate.

25 WHEREFORE, this answering defendant prays:

26 1. That each plaintiff take nothing by reason of the First Amended
27 Complaint;

28 2. For costs of suit herein incurred; and

1 3. For such other and further relief as this court may deem just and proper.
2
3

DATED: October 19, 2007 JOSEPH COSTELLA & ASSOCIATES
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6 By: 
7

JOSEPH COSTELLA, Attorney for
Defendant, HUMANE SOCIETY SILICON
VALLEY
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PROOF OF SERVICE BY MAIL

The undersigned declares:

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. I am employed by Joseph Costella & Associates and my business address is 215 Lennon Lane, Suite 200, Walnut Creek, California, 94598.

On October 19, 2007, I served the attached **ANSWER TO FIRST AMENDED COMPLAINT** on the parties to said action by depositing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail in Walnut Creek, California, addressed as follows:

Stuart M. Wilson
Attorney at Law
1671 The Alameda, Suite 300
San Jose, CA 95126

REVIEWED BY: STANLEY ELLIOTT JACKSON, KENNETH JACKSON

Michael C. Serverian, Esq.
Rankin, Landsness, Lahde, Serverian &
Stock
96 North Third Street, Suite 500
San Jose, Ca 95112
Attorney for Defendant: City Of Santa Clara

William R. Seligmann, Esq.
William R. Seligmann Law Offices
333 Church Street, Suite A
Santa Cruz, Ca 95060
Attorney for Defendant: City Of Campbell

... by Campbell

Mark Foster Hazelwood, Esq.
Dirk Larsen, Esq.
Low, Ball & Lynch
505 Montgomery Street, 7th Floor
San Francisco, CA 94111-2584

*...and the other two, the *U.S. Environmental Protection Agency**

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 19, 2007, at Walnut Creek, California.

Tina Biles

10-19-07

Silicon Valley, July 2007

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Joseph Costella, Esq. (State Bar # 114368) Joseph Costella & Associates 215 Lennon Lane, Suite 200, Walnut Creek, CA 94598		FOR COURT USE ONLY
TELEPHONE NO.: (925) 945-4491 FAX NO. (Optional): (925) 945-4454		
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name): Defendant HUMANE SOCIETY SILICON VALLEY		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA		
STREET ADDRESS: 191 North First Street		
MAILING ADDRESS:		
CITY AND ZIP CODE: 95113		
BRANCH NAME: Unlimited Jurisdiction		
PLAINTIFF/PETITIONER: LEE JACKSON, et al.		
DEFENDANT/RESPONDENT: SILICON VALLEY ANIMAL CONTROL AUTHORITY, et al.		
CASE MANAGEMENT STATEMENT		CASE NUMBER:
(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE <input type="checkbox"/> LIMITED CASE (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		1-07-CV-079050

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: November 13, 2007 Time: 10:00 a.m. Dept.: 22 Div.: Room:

Address of court (if different from the address above):

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. This statement is submitted by party (name): HUMANE SOCIETY SILICON VALLEY
 - b. This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in complaint cross-complaint (describe, including causes of action): Seizure of pets

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PLAINTIFF/PETITIONER: LEE JACKSON, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: SILICON VALLEY ANIMAL CONTROL AUTHORITY, et al.	1-07-CV-079050

4. b. Provide a brief statement of the case, including any damages. (*If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.*)

Claim based on destruction of some of Plaintiff's multiple pets and the adoption of the others.

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. The trial has been set for *(date)*:
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. days *(specify number)*: 4
- b. hours *(short causes)* *(specify)*:

8. **Trial representation *(to be answered for each party)***

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. Fax number:
- f. E-mail address:
- g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference *(specify code section)*:

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel has has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. All parties have agreed to a form of ADR. ADR will be completed by *(date)*:
- c. The case has gone to an ADR process *(indicate status)*:

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PLAINTIFF/PETITIONER: LEE JACKSON, et al.	CASE NUMBER:
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10. d. The party or parties are willing to participate in (*check all that apply*):

- (1) Mediation
- (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) Binding judicial arbitration
- (5) Binding private arbitration
- (6) Neutral case evaluation
- (7) Other (*specify*):

e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (*specify exemption*):

11. Settlement conference

The party or parties are willing to participate in an early settlement conference (*specify when*):

12. Insurance

a. Insurance carrier, if any, for party filing this statement (*name*): Travelers Insurance Company

b. Reservation of rights: Yes No

c. Coverage issues will significantly affect resolution of this case (*explain*):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

Bankruptcy Other (*specify*):

Status:

14. Related cases, consolidation, and coordination

a. There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

Additional cases are described in Attachment 14a.

b. A motion to consolidate coordinate will be filed by (*name party*):

15. Bifurcation

The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

16. Other motions

The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

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PLAINTIFF/PETITIONER: LEE JACKSON, et al.	CASE NUMBER:
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17. Discovery

a. The party or parties have completed all discovery.
 b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiffs, Lee Jackson/Kenneth Jackson Form Interrogatories/Production of Documents		September 20, 2007
Plaintiffs, Lee Jackson/Kenneth Jackson Statement of Damages		September 5, 2007

c. The following discovery issues are anticipated (*specify*):

18. Economic Litigation

a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
 b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):

b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): none attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: October 14, 2007

JOSEPH C. COSTELLA

(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached

PROOF OF SERVICE BY MAIL

The undersigned declares:

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. I am employed by Joseph Costella & Associates and my business address is 215 Lennon Lane, Suite 200, Walnut Creek, California, 94598.

8 On October 19, 2007, I served the attached **CASE MANAGEMENT**
9 **STATEMENT** on the parties to said action by depositing a true copy thereof in a
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11 Walnut Creek, California, addressed as follows:

Stuart M. Wilson
Attorney at Law
1671 The Alameda, Suite 300
San Jose, CA 95126

Michael C. Serverian, Esq.
Rankin, Landsness, Lahde, Serverian &
Stock
96 North Third Street, Suite 500
San Jose, Ca 95112

Attorney for Defendant: City Of Santa Clara

17 William R. Seligmann, Esq.
18 William R. Seligmann Law Offices
333 Church Street, Suite A
Santa Cruz, Ca 95060

Santa Cruz, Ca 95060

Mark Foster Hazelwood, Esq.
Dirk Larsen, Esq.
Low, Ball & Lynch
505 Montgomery Street, 7th Floor
San Francisco, CA 94111-2584

Attorney for Defendant: Silicon Valley Animal Control Authority

I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on October 19, 2007, at Walnut Creek, California.

TINA BILES